

**UNITED STATES DISTRICT COURT**

For the

**WESTERN DISTRICT OF TEXAS**

FILED

2019 NOV -4 AM 10:27

CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY

*G*

STEVEN HIRSCH  
Plaintiff,

v.

DOUGLAS WILLIAM OWEN; OWEN MEDIA  
GROUP LLC  
DEFENDANT(s)

Civil Action No, 1:19-cv-1037-RP

**DEFENDANTS' ANSWER IN RESPONSE TO COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF FROM COPYRIGHT  
INFRINGEMENT**

**ANSWER**

Plaintiff Steven Hirsch, for his complaint against Douglas William Owen and Owen Media Group LLC, Defendants (collectively "defendants") answer as follows:

- 1-3. Admit.
4. Admit that Plaintiff alleges that this Court has subject matter jurisdiction as provided by 28 USC § 1331, and 28 U.S.C. § 1338(a)
5. Admit that Plaintiff alleges that this Court has jurisdiction over the Defendant because the Defendants principal place of business is in the state of Texas.
6. Deny the Plaintiff's claim that a substantial part of these events occurred in this judicial district. Admit that the Plaintiff alleges that the venue is proper pursuant to 28 U.S.C § 1319(b)
7. Admit plaintiff alleges he is a professional photographer.
8. Admit plaintiff alleges he is "copyright owner" who holds "exclusive rights" to his copyrighted works.
9. Admit.
10. Defendant denies that he published the Plaintiff's copyrighted work. Admit that the Defendant's work did appear on the Plaintiff's website.
11. Admit.
12. Admit.
- 13-19. Deny knowledge or information sufficient to form a belief as to the truth.
20. Deny.

21. Defendant denies knowledge or information sufficient to form a belief as to the truth.
22. Deny.
23. Deny.
24. Admit.
25. Deny knowledge or information sufficient to form a belief as to the truth.
26. Deny.
- 27- 31. Defendant denies knowledge or information sufficient to form a belief as to the truth.
- 32- 35. Defendant denies each and every allegation in paragraphs 32-35 of the Complaint.
36. Deny.
37. Defendant denies knowledge or information sufficient to form a belief as to the truth.
  
38. With respect to the prayer contained on pages 8-9 of the Complaint, the Defendant denies that any of the alleged acts or omissions caused Plaintiffs or the putative class members any damages and the Defendant denies that Plaintiffs are entitled to recover any damages or any other relief from him.

### **Affirmative and Other Defenses**

1. The Defendants' deny plaintiff has sustained any damage, deny the nature and extent of damage (if any) and deny they caused plaintiff to sustain any damage.
2. The Defendants' upon notice, acted in accordance with Title II of the 1998 Digital Millennium Copyright Act is known as the Online Copyright Infringement Liability Limitation Act (OCILLA) (17 U.S.C. § 512)

DMCA OCILLA provides safe harbors which effectively protect most telecommunications companies, internet access providers, bulletin board operators, hosts, intermediaries, and "online service providers" of all kinds from contributory or vicarious copyright liability based on infringements by hosted subscribers and others whose content is transmitted, stored, etc. by such online service providers. See *Costar Group, Inc. v. Loopnet, Inc.*, 164 F.Supp. 2d 688 (D.Md. 2001); *ALS Scan, Inc. v. RemarQ Communities, Inc.*, 239 F.3d 619 (4th Cir. 2001); *Hendrickson v. eBay, Inc.*, 165 F.Supp. 2d 1082 (C. D. Cal. 2001); *Perfect 10, Inc. v. Cybernet Ventures, Inc.*, 2002 U.S. Dist. LEXIS 7333 (Filed April 22, 2002 C. D. Cal.). 3. For leading case on scope of safe harbors in context of Internet peer-to-peer file sharing, see *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001); for analysis of Napster cases, see David L. Hayes, "Advanced Copyright Issues on the Internet," [http://www.fenwick.com/docstore/355/Advanced\\_Copyright\\_02-29-04.pdf](http://www.fenwick.com/docstore/355/Advanced_Copyright_02-29-04.pdf).

3. It is the Defendants' policy to respond to notices of alleged infringement that comply with the Digital Millennium Copyright Act (found at the U.S. Copyright Office) and other

applicable intellectual property laws. It is Defendants' policy to remove material from public view that we believe in good faith to be copyrighted material that has been illegally copied and distributed by any of our members or users. It is also the Defendants' policy to terminate the accounts of repeat offenders. If the Defendants' remove or disables access to comply with the Digital Millennium Copyright Act he will make a good-faith attempt to contact the owner, author, or administrator of each affected site so that they may make a counter notification pursuant to sections 512(g)(2) and (3) of that Act.

The Defendants' reserve the right to file an Amended Defendant's Answer with the Court to plead additional verified pleas, affirmative defenses and claims, cross-claims or third-party claims, as applicable, after further investigation and discovery.

WHEREFORE, Defendants respectfully request that this Court:

- i. Enter judgment on Defendants' behalf on each of the counts in Plaintiff's complaint;
- ii. Dismiss the complaint with prejudice,
- iii. I also ask for such relief as the court finds equitable and just.

Dated November 4, 2019

Respectfully submitted,

Defendants  
DOUGLAS WILLIAM OWEN;  
OWEN MEDIA GROUP LLC  
2400 Willow Way  
Round Rock, Tx 78664